

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No 185 of 1997

Date of decision: 29-7-98

For Approval and Signature

The Hon'ble Mr. Justice S. K. KESHOTE

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

UJJAVALSINH GANPATRAO GAYEKWAD

Versus

VASANT RAMCHANDRA MORE

Appearance:

MR KM PARIKH for Petitioners

MR RS PANJWANI for Respondent No. 1

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 29/07/98

ORAL JUDGEMENT

This second appeal under section 100 of the Code of Civil Procedure is filed by the original plaintiffs against the judgment and order passed by the 2nd Extra Assistant Judge, Vadodara, in Regular Civil Appeal No.408/83 decided on 10th July, 1997, confirming the judgment and decree passed by the Joint Civil Judge (J.D.), Baroda on 30-8-1983 in Regular Civil Suit No.1897/88, under which the suit of the plaintiff for the relief of possession of the suit premises from the defendant has been dismissed. This appeal is barred by two days.

2. Heard the learned counsel for the parties on merits of the matter. The suit has been filed by the plaintiff-appellant for possession of the suit premises from the defendant on the ground that the defendant is a trespasser. From the judgment of the courts below I find that there is overwhelming evidence produced on record by the defendant -respondent to show that he was in possession of the suit premises since long; that his grand mother was in possession of the suit premises since 1959 and he was residing with her since then. This evidence is in the form of correspondence, letters, money orders etc., The defendant is the grandson of deceased Kamlabai. So the courts below have not committed any error in holding that the defendant was not a trespasser. Whatever be the reasons given for the dismissal of the suit, the plaintiff appellant has failed to satisfy this court that the defendant was a trespasser. In the presence of overwhelming documentary evidence which has been considered in extenso by the courts below, I am satisfied that the defendant was not a trespasser and the suit of the plaintiff has rightly been dismissed.

3. The question whether the defendant is a trespasser or not is purely a question of fact. On the basis of the documentary evidence which has been produced by the defendant -respondent both the courts below have recorded finding of fact on this issue. That finding of fact cannot be said to be perverse or it is not the case where the courts below have misread the evidence. The only contention raised by the learned counsel for the appellant plaintiff is that the premises was given to late Kamlabai as she was maid servant of the family of the plaintiff. After she left the service she and defendant continued to reside in the premises for long period. Therefore it cannot be said that it is a case of trespasser. The plaintiff has to succeed in the suit, and the prayer made in the suit can be granted only when the case with which he has come in the court is proved.

The case of the plaintiff was that the defendant is a trespasser and when it was not established, then rightly the suit has been dismissed. No question of law, much less any substantial question of law arises in the present case which calls for interference by this court. This second appeal has no merits and the same is dismissed.

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